

The following document is intended to provide guidance for school staff and parents regarding the provisions for Extended School Year services. The document overviews the most commonly asked questions and answers to issues of Extended School Year services.

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EXTENDED SCHOOL YEAR (ESY)

The 1997 amendments to the Individuals with Disabilities Education Act (IDEA '97) give educators responsibility for development and delivery of a free appropriate public education (FAPE) to children with disabilities. IDEA '97 defines FAPE as special education and related services that are provided at public expense and are provided in conformity with an individualized education program (IEP).

A central issue in FAPE is the team's determination of what services are *appropriate*. The process of the IEP development ensures that children with disabilities have *appropriate* education planning, based on *appropriate* evaluation, to accommodate their unique instructional needs, and that these needs are met in an *appropriate* learning environment. The IEP process ensures that children with disabilities receive an *appropriate* education.

Another issue regarding appropriate education is whether the educational program is sufficient to provide meaningful educational benefit. The concept of benefit is an integral part of the IEP process. The IEP team examines a child's present level of educational performance or development, as well as the child's ability to progress beyond that level if provided with an effective program. If that program results in measurable advancement toward goals and objectives/benchmarks that are appropriate for the child, then the child has received an appropriate education because he or she has benefited from his or her schooling. Thus, progress towards goals and objectives/benchmarks, and documentation of that progress become core concerns in the provision of FAPE.

Some children with disabilities may not receive FAPE unless they receive needed services during time periods when other children, both disabled and non-disabled, normally would not be served. As part of the IEP process, the team must determine if a child needs a program of special education and related services extending beyond the normal school year. For such a child, restricting services to a standard number of school days per year or school hours per day does not allow development of an education program that is truly individualized and benefits the child. **A child with a disability may require extended school year (ESY) services in order to receive FAPE. This results in additional special education and related services to supplement the normal school year [ARS 15-881(D)].**



LEGAL AUTHORITY FOR ESY

FAPE was first established in federal law by PL 94-142. Since that time, the basis for interpretation of ESY requirements was drawn from case law. The federal regulations do not create new legal standards for ESY services but brings together well-established case law in this area.

Section 300.309 **Extended School Year Services**

(a) *General.*

- (1) Each school shall ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.
- (2) Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with Sections 300.340-300.350, that the services are necessary for the provision of FAPE to the child.
- (3) In implementing the requirements, a school may not:
 - (i) Limit extended school year services to particular categories of disability; or
 - (ii) Unilaterally limit the type, amount, or duration of those services.

(b) *Definition.* As used in this section, the term extended school year services means special education and related services that:

- (1) Are provided to a child with a disability:
 - (i) Beyond the normal school year of the school;
 - (ii) In accordance with the child's IEP;
 - (iii) At no cost to the parents of the child; and
 - (iiii) Meet the standards of the state.

(Authority: 20 U.S.C. 1412(a)(1))

The analysis of comments that accompanied the Federal Regulations provides clarification of responsibilities for ESY services:

- It is the obligation of the school, including charter schools, to ensure that children with disabilities who require ESY services in order to receive FAPE have the necessary services available to them.
- The individualized determination about each child with a disability's need for ESY services are made through the IEP process.
- The right of an individual child to ESY services is based on that child's entitlement to FAPE. [34 CFR Part 300, Attachment 1-Analysis of Comments and Changes, *Federal Register*, p.12576].

The determination of whether a child with a disability needs ESY services must be made on an individual basis following the IEP process. The critical question that each IEP team must ask regarding ESY services is whether the learning that occurred during the regular school year will be significantly jeopardized if ESY services are not provided.

In the state of Arizona, extended school year services are addressed in special education statutes [ARS 15-881] and rules [AAC R7-2-408]. The provision of extended school year applies to all public education agencies.

AAC R7-2-408. Extended School Year Programs for Children with Disabilities

- A. “Extended school year” shall be as defined in A.R.S. § 15-881.
- B. Eligibility. Eligibility shall be determined by the Individualized Education Program (IEP) Team. Criteria for determining eligibility in an extended school year program shall be:
 - 1. Regression-recoupment factors;
 - 2. Critical learning stages;
 - 3. Least restrictive environment considerations;
 - 4. Teacher and parent interviews and recommendations;
 - 5. Data-based observations of the pupil;
 - 6. Considerations of the pupils’ previous history; and
 - 7. Parental skills and abilities.
- C. The extended school year program is not compulsory and is not required for all students with a disability.
- D. Factors that are inappropriate for consideration. Eligibility for participation shall not be based on need or desire for any of the following:
 - 1. A day care or respite care service for students with a disability;
 - 2. A program to maximize the academic potential of a student with a disability; and
 - 3. A summer recreation program for students with a disability.

What have the courts said about extended school year services?

In *Armstrong v. Kline* (E.D. Pennsylvania, 1979) the court stated: “The skill regression during the summer months for some children, coupled with their limited recoupment ability, is such that their basic educational needs cannot be met in a traditional 180 day program.”

In *Alamo Heights v. State Board of Education* (1986) the court held the following standard: “If a child will experience severe or substantial regression during the summer months in the absences of a summer program, the child with disabilities may be entitled to year round services. The issue is whether the benefits accrued to the student during the regular school year will be significantly jeopardized if he/she is not provided an educational program during the summer months.”

Recently, in *Johnson v. Bixby ISD 4* (10th Circuit, Tulsa County, OK, 1990) the court confirmed: Regression-recoupment is not the only measure used to determine the necessity of an ESY program. Other factors include “the degree of impairment, the ability of the child’s parents to provide the educational structure at home, the child’s rate of progress, his or her behavioral and physical problems, the availability of alternative resources, the ability of the child to interact with non-disabled children, the areas of the curriculum which need continuous attention, and the child’s vocational needs.”

A federal judge found that a Maryland school district had improperly restricted summer school enrollment to those children with disabilities most likely to regress (SER, Jan. 11, 1995). That ruling in *Reusch v. Fountain* (MJG-91-3124) says Montgomery County also should consider whether summer break would:

- Halt a child’s progress toward developing critical life skills;
- Interrupt a child with a disability at a critical breakthrough period; and
- Intensify “interfering behavior” such as aggression and self-injury.

Several recent court decisions have recognized the school's duty to offer extended school day services (ESD). *Garland Independent School District v. Wilks*, 1987 and *Burke County Board of Education v. Denton*, 1990, both affirmed the need for an ESD of more than five and a half hours for certain children.

DETERMINING NEED FOR ESY

Who is eligible for ESY services?

All children with disabilities who have a current IEP must be considered for ESY services at least annually. To ensure FAPE, the IEP team must consider and document whether ESY services are needed for each child regardless of the child's disabilities. The changes resulting from the federal regulations clarify that a school may not limit ESY services to particular categories of disability, or unilaterally limit the type, amount, or duration of those services. These requirements apply to all children with a disability from the ages of three through twenty-one.

Who determines the need for ESY services?

Determination of need rests with the IEP team which must be composed of the following individuals: parent(s), the child, if appropriate, general education teacher(s), special education and related service providers, administrator or school representative and others as appropriate. IDEA '97 intends that all persons involved in the IEP process be active participants. Each person fulfills an important role by bringing and sharing critical information about the child and his or her need for ESY services. IEP documentation must indicate the participation of all required participants.

What determines the need for ESY services?

Schools may not automatically or categorically exclude, or include, any group. Rather, the decision must be made according to the individual needs of the child. The determination for eligibility must be made annually. It should not be automatically assumed that a child who receives ESY one year will be eligible the following year, although it is one factor to consider when making the decision.

There are many factors which may be utilized by a school in making decisions about the need for ESY. While an analysis of regression-recoupment will identify most of the children needing ESY, schools should consider other factors.

Arizona statutes and rules have identified a range of factors that must be considered by the child's IEP team when determining the need for ESY services. These factors, alone or in combination, make it more likely that a child will experience significant regression and limited recoupment and thus require ESY services.

The IEP team must consider all appropriate factors, in determining whether the learning that occurred during the regular school year will be significantly jeopardized if the child is not provided ESY services. Schools should develop data collection forms to document the need for ESY services.

What factors should be considered when determining need for ESY services?

The factors to be considered in making ESY placement decisions shall include, but not be limited to the following:

1. Regression-Recoupment

One criteria in determining a child's need for ESY services is the likelihood of **significant regression** of previously learned skills during a break in service, and limited or **delayed recoupment** of these skills after services resume. The courts have found that the regression-recoupment measures are an integral part of the determination of need for ESY services, although they are not the only measures.

Regression: A decline to a lower level of functioning demonstrated by a decrease of previously learned skills which occurs as a result of an interruption in educational programming.

Recoupment: The ability to recover or regain skills specified in the IEP at the level demonstrated prior to the interruption of educational programming.

Regression-Recoupment Factor: When the amount of time required to relearn skills or behaviors becomes so significant that it interferes with ongoing educational progress. Since most children experience some regression over extended breaks, a significant increase in the recoupment period must exist in order for a child to be considered in need of ESY services. When considering regression-recoupment problems, schools should have procedures in place which address what is a reasonable amount of regression and rate of recoupment for the school's particular population. This will provide a standard against which an individual child's progress can be measured.

In determining significant regression and limited recoupment, it is important to consider the distinction between generalization and maintenance. A loss of skills over time could be due to failure to maintain performance or failure to generalize acquired skills to new settings. Many children do not automatically generalize acquired skills to environmental conditions outside those under which initial learning took place. In terms of interventions, the distinction between maintenance and generalization is essential. Regression may be an indication of either or both.

Example: Sara is a student with a disability at Anywhere Elementary School. During the past summer, Sara experienced severe regression in her ability to communicate with others. Instruction resumed in mid-August, but Sara did not recoup her communication skills until early October. Based upon these factors, Sara should be considered for ESY services in relationship to goals and objectives/benchmarks regarding communication.

2. Critical learning stages

This factor includes consideration of learning opportunities for behaviors or skills which have not yet been generalized at the time the scheduled break is to occur. If the child is unlikely to relearn the skills or information, or have another opportunity to generalize them to other situations, ESY should be considered in order to avoid irreparable loss of the learning opportunity.

Example: Joan is a student with a disability. Joan learned an essential skill in May, and was receiving instruction on generalizing that skill to other situations. ESY was recommended in order that Joan continue to receive instruction during this critical learning stage so that: 1) the new skill could be maintained; 2) that skill could be generalized to other situations while Joan was able and willing to perform them; and 3) the skill would not be lost and replaced with other, possibly inappropriate, behaviors.

3. Least Restrictive Environment Considerations

This factor should be considered when ESY is determined to be necessary in order for a child to **maintain placement** in the least restrictive environment (LRE) during the regular school year. This applies to a student who has been in a highly structured program to maintain essential skills that were established and are in danger of regression.

Example: Gina is a student with a disability at Your High School. During the review of her IEP, the team determined that, although her academic regression over summer vacation would not be significant, the loss of behavior control would be severe, if not permanent. The team also considered

Gina's placement in the school program, and determined that, without ESY, it was likely that Gina would have to be placed in a more restrictive environment for most of the following school year. Therefore, ESY would be necessary in order for her to remain in the least restrictive environment.

4. Teacher and Parent Interviews and Recommendations

Teacher interviews and recommendations, and parental input, including parent requests for ESY services need to be considered.

Example: John transferred to Any High School in November. Careful review of incoming records indicated that John had received ESY services the previous summer. The teachers documented his progress prior to winter break, and his recoupment rate after he returned to school. They also documented spring break regression-recoupment rates. The IEP team reviewed this documentation and information provided by John's parents at the IEP review meeting. The IEP team found that although John was likely to suffer some regression over the summer vacation period, it was not likely to take him a significant amount of time to recoup those skills. The team recommended that John not receive ESY services.

5. Data-Based Observations of the Pupil

Data collected by school staff or other qualified observers in the classroom or in the community can be the basis for an ESY decision.

Example: Earl attends Your Middle School. In September, the IEP team reviewed documentation of Earl's performance throughout the previous school year. Therapy notes and teacher data indicated inconsistent use of assistive technology for meaningful communication especially after school breaks. The IEP team determined that Earl was in need of extended school year services.

6. Considerations of the Pupils' Previous History

This factor is based on the past history of the student, including evidence of past regression, or past ESY services. The determination for eligibility must be made annually. It should not be automatically assumed that a child who has received ESY services in the past will be eligible the following year, although it is one factor to consider when making the placement decision.

Example: Miguel, a high school student at County High, has received ESY services intermittently in the past. The IEP team considered documentation of regression and recoupment provided by the present classroom teacher along with his previous history of service. The team determined that Miguel's regression-recoupment factor during the present school year was not significant and that ESY services would not be needed.

7. Parental Skills and Abilities

A parent or guardian may be unable to maintain a child's level of functioning during a break in programming. The program may be very complex, and the parents may not have either the time or expertise to continue the maintenance aspects of the program at home. This factor is relevant to whether the child can be expected to regress. Where appropriate, parents may be given training to assist them in home teaching and maintenance of specific skills or behaviors. While the skills and abilities of the parents can be considered, the parents cannot be expected to fulfill a responsibility for the school. The school is encouraged to work with the parents for the child's benefit, but cannot abrogate its duty to provide a free, appropriate public education to the child.

Example: Nikoa is a student with a disability at the Neighborhood Elementary School. Nikoa has been in a highly structured program aimed at promoting appropriate independent daily activity skills. The IEP team determined that in order to maintain Nikoa's skills, it would be necessary to provide 12 hours of training to the parent on use of appropriate supports. In addition, one half hour weekly visits needed to be established by the school to insure that parental skills are maintained to support Nikoa. This decision was based on the fact that Nikoa's mother was unable to provide the required support needed to maintain the skills being learned without this assistance.

Case law also includes the following factors to be considered in determination of need for ESY services:

- (1) the child's behavioral and physical problems;
- (2) availability of alternative resources;
- (3) the ability of the child to interact with non-disabled children;
- (4) the areas of curriculum that need continuous attention; and
- (5) the child's vocational needs.



How is the need for ESY services measured?

Determination of the need for ESY cannot be based on a formula. Formulas lack the individualization that ensures that children with disabilities have appropriate educational planning to accommodate their unique needs. Case law supports this conclusion: the determination of need for ESY services cannot be based on a policy that prohibits or inhibits full consideration of the needs of each child with a disability.

The IEP team's review determines if the learning that has occurred will be significantly jeopardized if ESY services are not provided during an extended interruption in services.

The information that is needed by an IEP team to determine a child's need for ESY services is gathered through ongoing measurement of the child's progress toward the current IEP goals and objectives/benchmarks. An essential component of a child's goals and objectives/benchmarks is the method to measure progress. Information can be gathered through a variety of informal and formal measures. Those measures may include a record of daily performance, criterion-referenced and norm-referenced test data, anecdotal records from information collected throughout the year, behavior checklists, or student work samples.

Progress toward meeting goals and objectives/benchmarks is monitored on a regular basis through periodic reports given to parents at least as often as all other parents are informed of their children's educational progress. The periodic progress report includes a description of the child's progress toward meeting each goal and its corresponding objectives/benchmarks. The review of progress must use the same measurement criteria specified in the goals. The review clearly specifies how the child's performance at the time of review is different from performance observed at the time the IEP was written, addressing any lack of expected progress toward annual goals and possible regression-recoupment concerns.

As with all other components of the IEP process, parents must be involved in decisions regarding a child's educational progress, including progress toward annual goals. Parents must receive a periodic review of the child's progress toward annual goals and the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the IEP year. This record of progress is important to the team's consideration of need for ESY services.

In addition to the valuable information already being gathered to determine progress toward annual goals and short-term objectives/benchmarks, a child's IEP team should consider the following points in determining the need for

ESY services:

- information from a variety of sources;
- information that reflects the child's performance after long weekends, short breaks, vacations, and past summer breaks; and
- prior experience with regression-recoupment and predictive information.

In considering evidence of regression, a team should select information that is measurable. The minimum points of measurement are:

- (1) at the end of instruction (i.e., the end of the school year);
- (2) at the beginning of subsequent instruction (i.e., the beginning of the next school year); and
- (3) at the time of recoupment (i.e., the date of regaining skills that had been attained last May).

A difference in skill attainment following an interruption in services is a measure of regression. Identifying how much time is required for regaining lost skills may require several measurements to determine when recoupment actually takes place.

When is regression-recoupment considered severe or significant?

Research shows that regression-recoupment occur in both disabled and non-disabled children and will vary across skills, people, and circumstances. The concern is that for some disabled children the regression is so severe and the recoupment period so long that without ESY services, the learning that occurred during the regular school year would be significantly jeopardized if ESY services are not provided.

Federal Regulations and current court cases do not address the extent of regression-recoupment needed to qualify for ESY services. The determination of need for ESY is made on an individualized basis after careful and critical analysis of the on-going data gathered by the IEP team.

Is the IEP team required to demonstrate regression before ESY services are provided?

No. A child can not be required to fail, or be required to demonstrate a lack of progress for an entire year, simply to prove need for ESY services. If no empirical data is available on regression, the need may be shown by expert opinion or prospective criteria established by the IEP team.

How often must a child be considered for ESY?

All children with disabilities must be considered for ESY services at least annually.

Does involvement in ESY one summer assure involvement the following summer?

No. A child's involvement in ESY services one year does not automatically guarantee services in the following years. Similarly, the fact that no ESY services were provided in a prior year does not mean ESY services are not needed in the current year. The decision is made on an annual basis.

If a child does not meet all of his or her IEP goals and objectives/benchmarks during the regular school year, does this mean ESY services are required?

No. ESY services should not be granted solely on the basis of the child with disabilities not achieving one or more IEP goals or objectives/benchmarks. The critical question that each IEP team must ask regarding ESY services is

whether the learning that already occurred during the regular school year will be significantly jeopardized if ESY services are not provided.

Is the IEP team required to document the eligibility for ESY services?

Yes. After the child's IEP team has completed the discussion regarding ESY, the IEP must provide written justification for their decision.

DETERMINING SERVICES FOR ESY

When should the IEP team meet to determine ESY services?

The team must consider the needs for ESY services at the annual IEP meeting. However, under some circumstances, the need for ESY services and the characteristics of ESY services may not be known at the time of the annual IEP meeting. In that case, the team can identify the date it will reconvene to determine needs and services to be provided. The team may also plan what data should be gathered to assist them in making those later determinations and document that plan on the IEP. If the decision regarding ESY is delayed, an addendum documenting ESY determinations would then be completed and attached to the current IEP at that later time or the IEP would be reviewed and revised.

The regulations do not specify a minimum timeline, in terms of how many days in advance of the end of the school year, that IEP team determinations must be finalized. According to the analysis of Federal Regulations "public agencies are expected to ensure that these determinations are made in a timely manner so that children with disabilities who require ESY services in order to receive FAPE can receive the necessary services." [34 CFR Part 300, Attachment 1- Analysis of Comments and Changes, *Federal Register*, p. 12576].

The IEP document will serve to notify the parents of whatever ESY determinations have been made. As part of the IEP process, the parents would be fully informed of their rights and of procedures through which they may question a decision of the IEP team. The IEP team meeting during which ESY needs and services are determined should be accomplished in sufficient time to permit any party to exhaust administrative remedies prior to the beginning of the ESY services.

Should new goals and objectives/benchmarks be developed for ESY services?

No. ESY services address the maintenance of previously learned skills, as identified in the current IEP. The intent of ESY services is not to teach new skills. Therefore, new goals and objectives/benchmarks should not be added to a child's IEP for implementation during ESY services.

How does the IEP team determine the amount of ESY services for each student?

The determination of the extent of services must be made on an individual basis after a thorough review of the student's goals and objectives/benchmarks. The IEP team must determine how much time is needed to assure maintenance of skills that would be jeopardized if the child did not receive ESY services.

How do LRE requirements relate to ESY program decisions?

ESY services must be provided only if the child's IEP team determines, on an individual basis and in accordance with IEP requirements, that the services are necessary for the provision of FAPE. "In accordance with IEP requirements" means the team must specify the types and amounts of services consistent with the needs of the individual child with a disability and that child's right to FAPE.

The requirements regarding placement in the LRE during the academic year also apply to ESY. However, while ESY services must be provided in the LRE, a school is not required to create new programs as a means of providing ESY services to children with disabilities in integrated settings, if the school does not provide services at that time for its non-disabled children. Thus, LRE considerations for ESY are not identical to LRE considerations that apply during the regular school year. The full continuum of educational options is usually not available during ESY, and according to the U.S. Department of Education the school is not required to create such a program for that sole purpose.

Where can ESY services be provided?

That same source states that a school is not prohibited from providing ESY services in a non-educational setting, if the child's IEP team determines that the child could receive appropriate services in that setting. The characteristics of services, including location and LRE considerations, should be based upon the unique needs of the child. The IEP team should consider a flexible service model that takes those needs into account. For some children, the appropriate LRE could be at home with the other family members and with only very limited ESY services.

ESY services are intended to minimize the effects of significant regression. Therefore, it is reasonable for ESY services to concentrate on areas at risk for significant regression. Because of this focus, ESY services may differ markedly from the services provided to a child during the school term. Services could logically be modified in a way to enhance generalization and maintenance of skills. As with any IEP, the needs of the child dictate the program, rather than the available programs dictating the services to be provided to the child.

Individualized ESY services could be provided in a traditional classroom setting; however, the location and nature of service delivery can vary with the needs of the child.

Other appropriate service delivery options could include:

- school based programs that vary in length of schedule (e.g., two weeks, six weeks, ten weeks);
- grouping of children with similar goals and objectives/benchmarks;
- intra-school cooperative programs (e.g., Title 1);
- a cooperative program with another agency;
- limited child contact, perhaps 3-4 times during the summer to prevent regression;
- a week of intensive review just prior to the beginning of the school year;
- multi-school shared programs;
- contractual arrangements;
- community based programs;
- transition opportunities; or
- services provided by the parent in the home and supported by school personnel.

Some children may need services provided in the home or at an alternative location. Some children might benefit most by providing training to the parent in advance of long breaks in regular school schedules. The teacher and parent would work together, with materials sent home. The teacher would periodically monitor progress. Such home consultation prior to the vacation and at intervals during the vacation, if needed, could provide support and

instruction to parents in preventing regression. It offers the additional benefit of increased opportunities for practice and generalization across settings. However, a school cannot simply choose to delegate its responsibilities for providing ESY services to the parents. The option of home consultation would depend upon availability of parents throughout the ESY day, their desire to assist, the complexity of their child's needs, as well as many other factors.

Who can provide ESY services?

IDEA '97 does not specifically require an indication of who (i.e., the position) is providing a service. It is suggested, in order for the parent and other IEP team members to be fully informed, that the IEP specifies the position of the person(s) providing the service(s). This may include one or more of the following:

- certified or licensed professionals,
- trained and supervised paraprofessionals,
- contracted providers through other agencies,
- family members.



RELATED SERVICES

Must the IEP team consider the provision of related services as ESY services?

Yes. The IEP meeting participants must consider whether the child requires related services, including transportation, in order to benefit from special education.

Is it necessary to make a separate showing of significant regression and poor recoupment of skills directly addressed by a related service, in order for the child to receive related services during the ESY?

No. A separate showing of a regression-recoupment problem is not required to establish the need for related services. What is required is a showing that related services are needed to assist the child to benefit from special education, thus assuring FAPE.

May a school provide related services as a sole component of an extended school year?

When determining eligibility for ESY services, the IEP team must also review and consider related services. While a child may not need extended school year special education, that child may need extended school year related services in order to benefit from special education when school resumes during the school term. In this instance, the related services may be the sole component of the extended school year program.

The decision as to whether the child should be provided related services as the sole component of an extended school year program is the responsibility of the IEP team. The team should consider whether, without such ESY related services, there would be regression problems in the child's special education program when school resumes. If related services are necessary for the student to benefit from special education either during the ESY or regular academic school schedule, those related services must be provided. If a child needs only a related service during ESY, it must be provided.

Is transportation provided as part of ESY?

Transportation is a related service and must be offered if it is necessary for the child to benefit from special education. If necessary, transportation should be added as a related service for the duration of ESY services.

SUMMER SCHOOL VS. EXTENDED SCHOOL YEAR

Is ESY the same as summer school?

The following table provides a comparison of ESY and summer school services:

Summer School	Extended School Year
Definition: An optional or permissive program provided beyond the regular school year. A school may elect to operate summer classes or not.	Definition: Services required by IDEA '97 to be provided beyond the traditional school year for any child with a disability who needs special education services and/or related services in order to receive a free appropriate public education (FAPE).
Purpose: Teaching new content or enrichment; offering recreational or academic opportunities not present during the regular school year. Children with and without disabilities benefit from additional educational opportunities.	Purpose: Assuring a child's meaningful progress during the regular school year (FAPE) by maintaining learned skills and preventing loss of critical skills. If services are not provided, child's skills are temporarily or permanently lost, jeopardizing progress. ESY services are not provided for the purpose of helping children with disabilities advance in relation to their peers.
Cost: Often on a fee basis.	Cost: Free to parents.
Duration: Typically operated on a set schedule for a number of weeks during the summer (e.g., two, six, or ten weeks) for all those who participate.	Duration: Schedule, setting, and extent of services designed to meet the individual needs of a child in order to assure FAPE. The amount and duration of services cannot be determined arbitrarily by a school's summer school schedule.
Instruction: General education setting, based on needs and interests of all children.	Instruction: Specially designed instruction based upon a child's individual needs.
Eligibility: A child's participation does not depend on a IEP team determination of need.	Eligibility: IEP team determines need and extent of services to meet the unique needs of the child.

May the child's ESY services be provided in a school's optional summer school program?

Yes. The summer school setting could offer unique and appropriate opportunities for a child to enhance generalization of skills in a setting very similar to that of the regular school year, as well as provide frequent practice for maintenance of skills. However, ESY services must be tailored to the unique needs of the child and can not be based solely on the availability of services during the summer. The amount and duration of ESY services can not be limited arbitrarily to the district's summer school schedule.

It is recommended that special education personnel collaborate with summer school staff, informing them of needed modifications and accommodations based upon the child's needs. Documentation of which goals and objectives/benchmarks have been selected as essential skills to be addressed by ESY services and delivered through summer school programming would be included within the team's documentation. Progress reports would be required at least as often as those provided to the parents of students without disabilities.

What are the responsibilities of a school for providing modifications and accommodations for a child with a disability who chooses to attend summer school and is not in need of ESY services?

All children with IEP's are entitled to accommodations within their educational program. Since these children are also eligible under Section 504 of the Rehabilitation Act of 1973, it is best to consult with the summer school teachers and inform them of the needed modifications and accommodations as stated in the child's IEP. Under Section 504, a school can not discriminate against a child with a disability in any program and/or activity offered by that school. Summer school courses are a program offered by the school and therefore can not discriminate against the child because of his or her disability.

How does an IEP team document ESY services?

Documentation of ESY services should specify:

- which goal(s) will be reinforced during ESY services;
- the type of services (such as direct instruction, specific related services, consultation, or supervision);
- the beginning date of services and the ending date of services;
- the minutes per week of each service;
- the service provider; and
- where the service will be provided.

PROCEDURAL SAFEGUARDS

What are the procedural safeguards regarding ESY?

Parents are entitled to a meaningful opportunity to fully participate in discussion of their child's needs and the development of their child's educational plan, which includes the ESY decision, and they must be fully informed of the ESY determination process.

Because consideration of ESY is a required component of every annual IEP, provision of procedural safeguards and written meeting notice for the annual development of the IEP constitutes adequate notice. Written meeting notice affords the parents the opportunity to participate in the determination of that decision. The parents of each child with a disability must be advised at each annual IEP meeting that ESY services are available for those students who are eligible.

If the parent is not available during an IEP meeting, a copy of the IEP and prior written notice (PWN) must be provided to them documenting the team decisions. Parents are not required to respond immediately upon receipt of the notice or upon being informed during the IEP meeting. Such notice gives the parents a chance to request reconsideration if the team determines that ESY is not appropriate for their child. The school would need to respond to any team member's request for reconsideration which is made outside of the IEP meeting. A meeting notice would then provide new meeting information if the team planned to reconvene.

What process should be followed if the parent initiates a request for ESY services or a change in the extent of those services, outside of the IEP meeting?

If a parent requests reconsideration of need for or extent of ESY services, outside of the team meeting, and the team has already made a determination regarding ESY services, then the school must respond in one of two ways. If the school is going to reconvene the IEP team to reconsider the parent's request, a written meeting notice and procedural safeguards notice must be provided to the parents. If the school denies the request, then a prior written notice must be provided to the parent stating reasons for the denial.

It is recommended that the parties attempt to resolve any disagreements locally through informal means, working through the school administration whenever possible. In addition to informal dispute resolution processes, a parent has the right to file a complaint or to request mediation or a due process hearing when disagreeing with an IEP team's decision(s) regarding ESY.

What process should be followed if the parent does not agree to the child receiving ESY services?

Some parents will decide not to have their child participate in ESY services, even if they qualify. If the family chooses to reject all ESY service options, the team should document this decision. Because compulsory attendance laws do not extend to days beyond the traditional school year, a school cannot compel a student to participate in ESY services.

SPECIAL CIRCUMSTANCES

What is the status of a child's ESY services when there is a dispute over proposed services?

It is important for the team to make decisions regarding the provision of ESY early enough in the school year to allow parents time to request administrative remedies when they disagree with a team's denial of services. If the parents disagree with the decision of the IEP team not to provide ESY services and the timing of the decision does not allow sufficient time to obtain resolution of the dispute, then it is recommended that the child be provided with ESY services pending the outcome of the dispute resolution process.

Parents need to be given a reasonable amount of time after being notified to express their disagreement with the denial of ESY services. It is recommended that a school develop a policy regarding timelines that are reasonable, and it is further recommended that that policy be clearly explained or otherwise made known to the parent. If the parents do not provide a timely response, then the school should not be required to provide the child with ESY services pending the outcome of the dispute resolution process or administrative proceedings.

How are ESY services determined for a child turning 3 over the summer months?

Section 300.121(c)(1) states that a child with a disability must receive FAPE no later than his or her third birthday. The analysis of comments that accompanied the Federal Regulations state, "The IEP or IFSP will specify whether services must be initiated on the child's third birthday for children with disabilities who transition from the Part C to the Part B program, if the child turns three during the summer" [34 CFR Part 300, Attachment 1- Analysis of Comments and Changes, *Federal Register*, p. 12577].

When a child with disabilities reaches the third birthday during the summer, some necessary personnel may not be available. Therefore, personnel must ensure that a meeting is held at least 90 days prior to the third birthday while necessary personnel are available. The IEP or IFSP developed for a child who will reach age 3 during the summer must specify the child's program upon the third birthday, including ESY services, if needed by that particular child to receive FAPE. If ESY services are not needed to provide FAPE, the date of initiation of services would be the beginning of the upcoming school year.

Can children with disabilities who have been placed by their parents in private schools receive ESY services?

The analysis of comments that accompanied the implementing regulations states, "As is true for determinations regarding services for children with disabilities placed in private schools by their parents, determinations regarding the services to be provided, including types and amounts of such services and which children will be served, are made through a consultation between representatives of public agencies and representatives of students enrolled by their parents in private schools. Through consultation, if a determination is made that ESY services are one of the services that a public agency will offer to parentally placed disabled children, Part B funds could be used for this purpose" [34 CFR Part 300, Attachment 1- Analysis of Comments and Changes, *Federal Register*, p. 12577].

FUNDING

How is ESY funded?

Congress passed the Education for All Handicapped Children Act in 1975, offering federal financial assistance to states to assist them in the development and improvement of educational programs for children who were “eligible” for special education. To qualify for assistance, states were and are required to submit plans to the federal government that assure that all eligible children with disabilities will receive FAPE.

When a school determines that a child with a disability requires particular special education and related services, the school is required to provide those services in conformity with an IEP. An IEP team may determine that a child with a disability requires ESY services in order to receive FAPE. Thus, ESY and related services qualify for the use of Part B funds from IDEA '97. The state of Arizona also provides funds to assist schools with costs for serving children with disabilities, including those who require ESY services.

State equalization funds are not specifically designated for ESY. Historically, the School Finance Division of the Arizona Department of Education has incorporated .04% into the state weighted formula for all students for this purpose. When budgeting for ESY services, it would be prudent to set aside at least .04% of the funds received from the state. It is also possible to designate funding to be used for ESY programming within the IDEA Federal Entitlement application. Schools often discover that in order to cover all ESY expenses, it is necessary to tap into the school's general budget.

Local Educational Agencies (LEAs) may apply for funds to supplement the state aid formula funds based upon the anticipated costs necessary to provide ESY services as specified in a student's IEP. This is done through an ESY grant managed by Exceptional Student Services. Funding recommendations are based upon the following criteria established by the State Board of Education in 1995:

- Priority 1 - LEAs with a 100th day count of 600 students or fewer,
- Priority 2 - LEAs with a 100th day count of 601-5,000 students, and
- Priority 3 - LEAs with a 100th day count of 5,001 students, or more.

Presently, the department awards grants to Priority 1 and Priority 2 LEAs that allow for full funding up to \$5,000. Those LEAs requesting larger amounts will be funded at a prorated level based on available funds. Historically, it has not been possible to fund at the priority 3 level.

LEAs will receive an ESY Grant application form in the spring to request funds in support of ESY. Be aware there is a limited timeframe and absolute deadlines for submitting the grants. ESY grants awarded cover the fiscal year. This means that funds received in the new fiscal year cover ESY services through out that fiscal year. For example, funds received in July 2000 cover the ESY services provided from July 1, 2000 through June 30, 2001.

LEAs must submit a Final Evaluation and Financial Completion report at the end of the contract period as required by grant procedures. The completion report contains both financial and narrative information regarding the use and effectiveness of the programs and services provided.

ESY services cannot be limited to the type, amount, or duration by the LEAs. A school may not use budgetary constraint as a reason to deny ESY services to an eligible student. It is expected that each school will plan for ESY expenditures as part of its annual budget, since the assurance of the provision of FAPE is a necessary condition for receiving Part B funds. Any child who requires ESY services in order to receive FAPE must be provided with needed ESY services.

**IEP Team Consideration for Extended School Year
(SAMPLE FORM)**

Child: _____ ID#/DOB _____	Date of Meeting: _____
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A. Documentation regarding ESY eligibility:

B. Eligible for ESY: _____ **Yes** _____ **No**

C. Reason: (Check all that apply)

_____	Regression/recoupment factor	_____	Data-based observations
_____	Critical learning stages	_____	Previous history
_____	LRE consideration	_____	Parental skills and abilities
_____	Teacher/parent interviews and recommendations	_____	Other factors _____

D. Refer to the IEP for goals targeted for ESY

SKILL	INITIATION DATE	DURATION	FREQUENCY	LOCATION	PROVIDER

DEFINITIONS

Critical learning stage: When a child has mastered a concept in one setting and is ready to generalize what has been learned so that it can be applied in other situations. If the child is unlikely to relearn the skills or information, or have another opportunity to generalize them to other situations, ESY should be considered to avoid irreparable loss of the learning opportunity.

Extended School Year (ESY): An individualized program, based on those goals and objectives/benchmarks on the IEP of the year preceding ESY, offered to special education students during all or part of interrupted educational periods. ESY extends instruction beyond the conventional or mandatory number of instructional days in a school year. In Arizona, the conventional school year is currently 175 days. The goal of ESY is to assist children with disabilities with the maintenance or critical generalization of specific IEP objectives/benchmarks learned the year preceding the ESY.

Individualized Education Program (IEP): Generally defined as a document outlining special education services to a child with a disability. The IEP includes: the pupil's present levels of educational performance, the measurable annual goals and short-term objectives/benchmarks for evaluating progress toward those goals and the specific special education and related services to be provided. The IEP must be reviewed at least once annually to monitor the student's progress and to assess the appropriateness of the student's educational program.

Multidisciplinary Evaluation Team (MET): A team of persons including individuals described as the IEP team and other qualified professionals who shall determine whether a child is eligible for special education.

Parent: The natural or adoptive parent of a child, the legal guardian of a child, a relative with whom the child resides and who is acting as the parent of that child, or a surrogate parent who has been court appointed for a child.

Recoupment: The amount of time required to relearn skills listed on the IEP following an extended break in instruction.

Regression: Reversion to a lower level of functioning in those skills or behaviors specified on the child's IEP, which results from an extended break in instruction.

Regression-recoupment Factor: When the amount of time required to relearn skills or behaviors becomes so significant as to interfere with ongoing educational progress. Since most children experience some regression over extended breaks, a significant increase in the recoupment period must exist in order for a child to be considered in need of ESY services. When considering regression-recoupment problems, schools should have procedures in place which address what is a reasonable amount of regression and rate of recoupment for the school's particular population. This will provide a standard against which an individual child's progress can be measure.

Retrospective data: Collected during the school year that indicates the child does or does not need an ESY/ESD program.

